



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

GOVERNMENT BUREAU
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200

www.mass.gov/ago

Initiative Petition Information Sheet

Title of Petition Massachusetts Death With Dignity Act

Petition Number 11-12

Proponents' Contact

Name Michael Clarke

Residential Address 2 Hancock Street, #302

City Quincy State MA Zip 02171

Phone (617) 858-6567 Fax (617) 507-6426

Email michael@campaignology.com

Business Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

Proponents' Attorney

Name Carl Valvo, Cosgrove, Eisenberg and Kiley, P.C.

City Boston State MA Zip 02110

Phone (617) 934-4786 Fax (617) 330-8774

Email cvalvo@ceklaw.net

Optional:

Will the proponents propose a summary by the Monday, 5 days after the petition-filing deadline?
Undecided at this time. Will advise.

Will the proponents submit a memo of law by the Friday 9 days after the petition-filing deadline?
Proponents will not file a memo by August 12, but will respond in writing to requests as necessary.

Please note that the above information will be made available to the public and particularly to possible opponents of certification. The Proponent and Proponents' Attorney (if any) will receive copies of any materials submitted by the public regarding certification.

AGO Staff Person Receiving Petition
Date

PS
8/2/2011

AN INITIATIVE PETITION

AN ACT RELATIVE TO DEATH WITH DIGNITY

Be it enacted by the People, and by their authority, as follows:

SECTION 1. It is hereby declared that the public welfare requires a defined and safeguarded process by which an adult Massachusetts resident who has the capacity to make health care decisions and who has been determined by his or her attending and consulting physicians to be suffering from a terminal disease **that will cause death within six months** may obtain medication that the patient may self administer to end his or her life in a humane and dignified manner. It is further declared that the public welfare requires that such a process be entirely voluntary on the part of all participants, including the patient, his or her physicians, and any other health care provider or facility providing services or care to the patient. This act, being necessary for the welfare of the Commonwealth and its residents, shall be liberally construed to effect the purposes thereof.

SECTION 2. The General Laws of Massachusetts shall be amended by inserting after chapter 201F the following new chapter 201G:—

CHAPTER 201G

MASSACHUSETTS DEATH WITH DIGNITY ACT

Section 1. Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Adult" means an individual who is eighteen years of age or older.
- (2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.
- (3) "Capable" means having the capacity to make health care decisions and to communicate them to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.
- (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.
- (5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
- (6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.
- (7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

- (a) his or her medical diagnosis;
- (b) his or her prognosis;
- (c) the potential risks associated with taking the medication to be prescribed;
- (d) the probable result of taking the medication to be prescribed; and
- (e) the feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in Massachusetts by the board of registration in medicine.

(11) "Qualified patient" means a capable adult who is a resident of Massachusetts and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(12) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

Section 2. Written request for medication.

(1) An adult resident of Massachusetts who is capable and has been determined by his or her attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this chapter.

(2) A person does not qualify under this chapter solely because of age or disability.

Section 3. Form of the written request.

(1) A valid request for medication under this chapter shall be in substantially the form set forth in section 21, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(2) At least one of the witnesses shall be a person who is not:

- (a) a relative of the patient by blood, marriage, or adoption;

- (b) a person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; and

- (c) an owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not serve as a witness.

(4) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility.

Section 4. Attending physician responsibilities.

(1) The attending physician shall:

(a) make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily;

(b) request that the patient demonstrate Massachusetts residency;

(c) to ensure that the patient is making an informed decision, inform the patient of:

(i) his or her medical diagnosis;

(ii) his or her prognosis;

(iii) the potential risks associated with taking the medication to be prescribed;

(iv) the probable result of taking the medication to be prescribed; and

(v) the feasible alternatives including, but not limited to, comfort care, hospice care, and pain control;

(d) refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;

(e) refer the patient for counseling if appropriate pursuant to section 6;

(f) recommend that the patient notify next of kin;

(g) advise the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter and of not taking the medication in a public place;

(h) inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period required by section 9;

(i) verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) fulfill the medical record documentation requirements of section 12;

(k) ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l) (i) dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under law to dispense and has a current drug enforcement administration certificate; or

(ii) with the patient's written consent: (A) contact a pharmacist and inform the pharmacist of the prescription; and (B) deliver the written prescription personally, by mail, or by otherwise permissible electronic communication to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dispensed pursuant to this paragraph (l) shall not be dispensed by mail or other form of courier.

(2) The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death.

Section 5. Consulting physician responsibilities.

A patient may not be considered qualified under this chapter until a consulting physician has examined the patient and his or her relevant medical records and confirmed, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verified that the patient is capable, is acting voluntarily, and has made an informed decision.

Section 6. Counseling referral.

If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not be prescribed unless and until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

Section 7. Informed decision.

A patient shall not receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the patient is making an informed decision.

Section 8. Notification of next of kin.

No patient shall receive a prescription for medication to end his or her life in a humane and dignified manner unless the attending physician has recommended that the patient notify the next of kin of his or her request for medication under this chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

Section 9. Written and oral requests.

In order to receive a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.

Section 10. Right to rescind request.

A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under this chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

Section 11. Waiting periods.

(1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this chapter.

(2) At least forty-eight hours shall elapse between the time the patient signs the written request and the writing of a prescription under this chapter.

Section 12. Medical record documentation requirements.

The following items shall be documented or filed in the patient's medical record:

(1) all oral requests by a patient to a physician for medication to end his or her life in a humane and dignified manner;

(2) all written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) the attending physician's diagnosis and prognosis, and determination that the patient is capable, is acting voluntarily, and has made an informed decision;

(4) the consulting physician's diagnosis and prognosis, and verification that the patient is capable, is acting voluntarily, and has made an informed decision;

(5) a report of the outcome and determinations made during counseling, if performed;

(6) the attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request under section 9; and

(7) a note by the attending physician indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

Section 13. Residency requirement.

Only requests made by Massachusetts residents may be granted under this chapter. Factors demonstrating Massachusetts residency include but are not limited to: possession of a Massachusetts driver's license; registration to vote in Massachusetts; or the filing of a Massachusetts resident tax return for the most recent tax year.

Section 14. Disposal of unused medications.

Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means.

Section 15. Information reporting; disclosure of information collected; annual statistical report.

(1) Not later than March 20, 2013, the department of public health shall promulgate rules requiring any health care provider upon dispensing medication pursuant to this chapter to file a copy of the dispensing record with the department and to otherwise facilitate the collection of information regarding compliance with this chapter; provided that all administratively required documentation shall be mailed or otherwise transmitted to the department as provided by rule no later than thirty days after the writing of a prescription and dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty days after the date of death of the patient. In the event that anyone required under this chapter to report information to the department provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) Except as otherwise required by law, the information collected pursuant to subsection (1) shall not be a public record to the extent it contains material or data that could be used to identify individual patients, physicians, or other health care providers.

(3) The department shall annually review the records maintained pursuant to this chapter and shall generate and make available to the public an annual statistical report of information collected under subsection (1) of this section.

Section 16. Contracts, wills, insurance policies, annuities.

(1) No provision in a contract, will, insurance policy, annuity, or other agreement, whether written or oral, made on or after January 1, 2013, shall be valid to the extent the provision would condition or restrict a person's decision to make or rescind a request for medication to end his or her life in a humane and dignified manner.

(2) No obligation owing under any contract, will, insurance policy, annuity, or other agreement made before the

effective date of this chapter shall be affected by the provisions of this chapter, a person's making or rescinding a request for medication to end his or her life in a humane and dignified manner, or by taking any other action authorized by this chapter.

(3) On and after January 1, 2013, the sale, procurement, or issuance of any life, health, or accident insurance policy or annuity or the premium or rate charged for any such policy or annuity shall not be conditioned upon or otherwise take into account the making or rescinding of a request for medication under this chapter by any person.

Section 17. No authorization of lethal injection, etc.; no reduction in standard of care.

(1) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection, active euthanasia, or mercy killing.

(2) Nothing contained in this chapter shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this chapter.

Section 18. Immunities; permissible sanctions.

(1) Except as provided in section 19 and subsection (3) of this section:

(a) No person shall be subject to civil or criminal liability or professional disciplinary action by any regulatory agency for any actions undertaken in compliance with this chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner. A person who substantially complies in good faith with the provisions of this chapter shall be deemed to be in compliance with this chapter.

(b) Actions taken in accordance with this chapter shall not constitute suicide, assisted suicide, mercy killing or homicide under any criminal law of the commonwealth.

(c) A patient's request for or the provision of medication in compliance with this chapter shall not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(2) Participation in this chapter shall be voluntary. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(3) (a) A health care provider may prohibit another health care provider from participating in this chapter on the premises of the prohibiting provider if the prohibiting provider has given prior notice to all health care providers with privileges to practice on the premises of the prohibiting provider's policy regarding participation in this chapter. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation in this chapter.

(b) A health care provider may subject another health care provider to the sanctions stated in this paragraph (b) if the sanctioning health care provider has notified the sanctioned provider before participation in this chapter that it prohibits participation in this chapter:

(i) loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in this chapter while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(ii) termination of a lease or other contract for the occupancy of real property or other nonmonetary remedies

provided by such lease or contract if the sanctioned provider participates in this chapter while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; provided, however, that no lease or other contract made on and after January 1, 2013, shall authorize or permit nonmonetary remedies for participation in this chapter in the form of loss or restriction of medical staff privileges or exclusion from a provider panel; or

(iii) termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in this chapter while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subparagraph (iii) prevents: (A) a health care provider from participating in this chapter while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or (B) a patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all otherwise applicable due process and other procedures the sanctioning health care provider may have in place that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection (3), the following terms and their variants shall have the meanings given:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider's participation in this chapter of the sanctioning health care provider's policy about participation in activities covered by this chapter.

(ii) "Participate in this chapter" means to perform the duties of an attending physician under section 4, the consulting physician function under section 5, or the counseling function under section 6. "Participate in this chapter" does not include: (A) making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis; (B) providing information about the Massachusetts death with dignity act to a patient upon the request of the patient; (C) providing a patient, upon the request of the patient, with a referral to another physician; or (D) a health care provider's contracting with a patient to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

Section 19. Willful alteration or forgery; coercion, etc., penalties.

(1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death shall be guilty of a felony punishable by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years or by a fine of not more than five thousand dollars or by both such fine and imprisonment.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, shall be guilty of a felony punishable by imprisonment in the state prison for not more than three years or in the house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars or by both such fine and imprisonment.

(3) Nothing in this chapter limits liability for civil damages resulting from the negligence or intentional misconduct by any person.

(4) The penalties in this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter.

Section 20. Claims by governmental entity for costs incurred.

Any governmental entity that incurs costs resulting from a person terminating his or her life under this chapter in a public place has a claim against the estate of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim.

Section 21. Form of the request.

A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A
HUMANE AND DIGNIFIED MANNER

I, , am an adult of sound mind and a resident of the Commonwealth of Massachusetts.

I am suffering from , which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist to fill the prescription.

INITIAL ONE:

. I have informed my family of my decision and taken their opinions into consideration.

. I have decided not to inform my family of my decision.

. I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die if and when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed:

Dated:

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

Witness 1

Witness 2

Initials

Initials

.....

.....

.....

.....

.....

.....

.....

.....

1. Is personally known to us or has provided proof of identity;
2. Signed this request in our presence on the date of the person's signature;
3. Appears to be of sound mind and not under duress, fraud, or undue influence; and
4. Is not a patient for whom either of us is the attending physician.

Printed Name of Witness 1:

Signature of Witness 1/Date:

Printed Name of Witness 2:

Signature of Witness 2/Date:

NOTE: At least one witness shall not be a relative by blood, marriage, or adoption of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Section 22. Title.

This chapter may be known and cited as the Massachusetts death with dignity act.

Section 23. Severability.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[End of proposed law. Signatures of subscribing petitioners appear on the following page.]

Pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment, the undersigned qualified voters of the Commonwealth of Massachusetts hereby submit the foregoing measure for approval by the people.

Marcia Angell
13 Ellery Sq., Cambridge MA

John W. Roberts
321 Huron Ave., Cambridge MA

Norma L. Shapiro
269 Laws Brook Rd., Concord MA

Dan W. Brock
180 Washington St., Newton MA

Hannah W. Zalinger
15 Kent Sq., Brookline MA

Lewis Cohen
51 Harrison Ave., Northampton MA

Carol Rose
11 Parker St., Lexington MA

Paul Arthur Spiers
14 Strawberry Hill Ln., Danvers MA

Edward Lowenstein
165 Auburn St, #2, Cambridge MA

James C. Gross
80 Highland Ave., Newton MA

Whitney Taylor
10 Thacher St., #516, Boston MA

Arnold S. Relman
13 Ellery Sq., Cambridge

Charles H. Baron
9 Lawrence Ave., Westport MA

Carl Valvo
87 Stow St., Concord MA

SUMMARY OF NO. 11-12

This proposed law would allow a physician licensed in Massachusetts to prescribe medication, at a terminally ill patient's request, to end that patient's life. To qualify, a patient would have to be an adult resident who (1) is medically determined to be mentally capable of making and communicating health care decisions; (2) has been diagnosed by attending and consulting physicians as having an incurable, irreversible disease that will, within reasonable medical judgment, cause death within six months; and (3) voluntarily expresses a wish to die and has made an informed decision. The proposed law states that the patient would ingest the medicine in order to cause death in a humane and dignified manner.

The proposed law would require the patient, directly or through a person familiar with the patient's manner of communicating, to orally communicate to a physician on two occasions, 15 days apart, the patient's request for the medication. At the time of the second request, the physician would have to offer the patient an opportunity to rescind the request. The patient would also have to sign a standard form, in the presence of two witnesses, one of whom is not a relative, a beneficiary of the patient's estate, or an owner, operator, or employee of a health care facility where the patient receives treatment or lives.

The proposed law would require the attending physician to:

- (1) determine if the patient is qualified;
- (2) inform the patient of his or her medical diagnosis and prognosis, the potential risks and probable result of ingesting the medication, and the feasible alternatives, including comfort care, hospice care and pain control;
- (3) refer the patient to a consulting physician for a diagnosis and prognosis regarding the patient's disease, and confirmation in writing that the patient is capable, acting voluntarily, and making an informed decision;
- (4) refer the patient for psychiatric or psychological consultation if the physician believes the patient may have a disorder causing impaired judgment;
- (5) recommend that the patient notify next of kin of the patient's intention;
- (6) recommend that the patient have another person present when the patient ingests the medicine and to not take it in a public place;
- (7) inform the patient that he or she may rescind the request at any time;
- (8) write the prescription when the requirements of the law are met, including verifying that the patient is making an informed decision; and
- (9) arrange for the medicine to be dispensed directly to the patient, or the patient's agent, but not by mail or courier.

The proposed law would make it punishable by imprisonment and/or fines, for anyone to (1) coerce a patient to request medication, (2) forge a request, or (3) conceal a rescission of

a request. The proposed law would not authorize ending a patient's life by lethal injection, active euthanasia, or mercy killing. The death certificate would list the underlying terminal disease as the cause of death.

Participation under the proposed law would be voluntary. An unwilling health care provider could prohibit or sanction another health care provider for participating while on the premises of, or while acting as an employee of or contractor for, the unwilling provider.

The proposed law states that no person would be civilly or criminally liable or subject to professional discipline for actions that comply with the law, including actions taken in good faith that substantially comply. It also states that it should not be interpreted to lower the applicable standard of care for any health care provider.

A person's decision to make or rescind a request could not be restricted by will or contract made on or after January 1, 2013, and could not be considered in issuing, or setting the rates for, insurance policies or annuities. Also, the proposed law would require the attending physician to report each case in which life-ending medication is dispensed to the state Department of Public Health. The Department would provide public access to statistical data compiled from the reports.

The proposed law states that if any of its parts was held

invalid, the other parts would stay in effect.